In my view, this section contains four distinct offences; the use of the word "or" is disjunctive; and in particular the words "recklessly or negligently" create two distinct offences:—

(i) to drive a motor vehicle recklessly; and

(ii) to drive a motor vehicle negligently.

The word "reckless" connotes a positive, active, mental condition, a certain wilfulness, a conscious disregard of consequences in doing an act.

The word "negligent" connotes a negative mental condition a failure to do something, an omission to take due care and precaution.

It is, I would think, quite clear that a driver might be "negligent" in many ways without being "reckless."

It is apposite to quote the words used by Lord Atkin in his judgment in the case of *Andrews* v. *Director of Public Prosecutions*, (H.L. April 22, 1937). This was a case of manslaughter by the driver of a motor-van. The following passage is relevant:—

> "Simple lack of care such as will constitute civil liability is not enough: for purpose of the criminal law there are degrees of negligence and a very high degree of negligence is required to be proved before the felony (manslaughter) is established. Probably of all the epithets that can be applied "reckless" most nearly covers the case. It is difficult to visualise a case of death caused by 'reckless' driving in the connotation of that term in ordinary speech which would not justify a conviction for manslaughter, but it is probably not all embracing, for "reckless" suggests an indifference to risk whereas the accused may have appreciated the risk and intended to avoid it and yet shown such a high *degree of negligence* in the means adopted to avoid the risk as would justify a conviction."

Charges of offences under the Motor Vehicles Enactment are tried summarily and the provisions of section 173 of the Criminal Procedure Code apply Section 173(a) reads:—

> "When the accused appears or is brought before the Court a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be *asked whether he is guilty of the offence charged* or claims to be tried."

It is impossible to make a simple plea of "guilty" to the charge in this case; and that shows clearly that the charge is bad—it is an illegal charge because it contains two distinct offences contrary to the provisions of section 163 of the Criminal Procedure Code. A charge must contain one offence and no more.

In a case such as the present an accused might well realise that he had been negligent in his driving and be quite ready to admit and plead guilty to negligence; while he would not consider he had been "reckless" and would not plead guilty to such. It is, therefore, impossible for him to plead guilty.

In a case such as this there is an express provision of the Code available, which should be applied, i.e. section 166 which reads:—

> "If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences."

Finally I do not consider that this is an irregularity curable under section 422 of the Code which provides that

> ". . . no finding, sentence, or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of any error, omission, or irregularity in the . . charge . . . unless such error, omission, . . . or irregularity has occasioned a failure of justice."

This is not such an error, omission, or irregularity. It is a contravention of an express provision of the Code, i.e. section 163; it is a matter of substance and not of form; it creates uncertainty and embarrassment; it is a charge to which it is impossible to make a simple plea; it is an illegality.

I consider this appeal should be allowed; the conviction and sentence set aside and the fine (which has been paid) refunded.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

AITKEN, J.

September 13, 1937.

In re **Estate of Haji Teh Hawa binte Haji Abdulrahman deceased.**

THE OFFICIAL ADMINISTRATOR, F.M.S. **Applicant.**

vs.

HAJI ABDUL MAJID BIN SHAHABUDIN **Respondent.**

[IPOH ORIGINATING SUMMONS No. 232 of 1937]

Probate and Administration Enactment (Cap. 8) S. 102—Administrator's duties—power of sale of intestate's immovable property—overriding effect of the Malay Reservations Enactment (Cap. 142) S. 15.

H. T. H. died intestate on the 9th November 1932. Letters of Administration were granted to, but not extracted, by her son H.A.M. The estate of the deceased consisted of her interest in 4 lots of land and part interest in two other lots of land in Rungkup. The estate was indebted to one T.L.N. in the sum of $3,262.84. In 1937 the grant of Letters of Administration to H.A.M.

was revoked in favour of the Official Administrator who duly extracted the same. All the six lots of land in which the intestate was interested at the time of her death were Malay Reservation lands. Before the intestate's death, that is to say, before the Malay Reservations Enactment came into operation, liens over two of the six lots of land had been created in favour of T.L.N. The lots unaffected by the Malay Reservations Enactment were sold by the Official Administrator and the proceeds of sale were paid over to T.L.N. in part satisfaction of her debt. On an application by Official Administrator for leave to sell the remaining four lots of land for the purpose of paying off the balance of the intestate's debt to T.L.N.

Held, that notwithstanding the provisions of section 102 of the Probate and Administration Enactment the Official Administrator had no power to dispose of the intestate's Malay Reservation Lands to discharge her debts.

H. G. Nelson, for the Official Administrator (Applicant).

M. S. Mahendran for the Respondent.

Cur. Ad. Vult..

AITKEN, J.—The abovenamed Haji Teh Hawa binti Haji Abdulrahman died intestate on the 9th of November 1932, at Rungkup in the State of Perak, and her estate consisted of the full interest in 4 lots of land in the mukim of Rungkup, and a part interest in two other lots of land in the same mukim. At the time of her death she was owing one Teh Lan Neoh $3,262.84, and though the Respondent obtained an order for the grant to him of Letters of Administration of his deceased mother's estate on the 5th of November, 1934, he took no steps to extract the Grant. It would seem that his failure to do so was due to Teh Lan Neoh's intentions in regard to the recovery of the $3,262.84 due to her from the deceased's estate.

In such circumstances the Official Administrator applied to me for revocation of the Letters of Administration so granted to the Respondent on the 5th of November, 1934, and for an order granting Letters of Administration of the deceased's estate to him, the Official Administrator, instead. An order to that effect was made on the 29th of January 1937, and on the 18th of the next month the Official Administrator extracted such Letters of Administration.

Now it seems to me that all the six lots of land in which the deceased was interested at the time of her death are Malay Reservation lands to which the Malay Reservations Enactment applies.

It also seems, however, that liens perfected by caveats over two of those six lots of land had been created in favour of Teh Lan Neoh before the deceased's death, and before the Malay Reservations Enactment came into force on the 15th of December 1933.

The Official Administrator obtained leave from me to sell the two lots of land over which such liens had been perfected shortly after he has extracted his Letters of Administration, and no dispute has arisen as to them. They have been duly sold, and the proceeds of sale have been paid over to Teh Lan Neoh in part satisfaction of her debt. But the present application by the Official Administrator for leave to sell the deceased's interests in the remaining four lots of land has given rise to a neat point of law which requires my decision and which may be stated as follows:—

Mr. Nelson, on behalf of the Official Administrator, contends that the duty of paying "all debts due by the deceased's estate," which is cast on an administrator by Section 102 of the Probate and Administration Enactment, obliges him to sell the deceased's interests in these four lots of land for the purpose of paying the balance of the debt due to Teh Lan Neoh. According to Mr. Nelson there is nothing in the Malay Reservations Enactment to prevent the Official Administrator from carrying out the duty imposed on him by this Section 102 of the Probate & Administration Enactment.

On the other hand Mr. Mahendran for the Respondent points out that Section 13 of the Malay Reservations Enactment has deprived even Judgment Creditors of their remedies by attachment and sale of Malay Reservation Lands. He asks, quite pertinently, whether a creditor of a deceased person can be allowed to obtain a sale of such lands though he could not have obtained a sale thereof during his debtor's lifetime, and though such a sale would deprive the deceased's heirs of their rights of succession to his Malay Reservation Lands.

It is to be observed that the whole of the Malay Reservations Enactment is later in date to Section 102 of the Probate & Administration Enactment, and in my opinion the whole of the former provisions must prevail. According to its long title the object of the Malay Reservations Enactment is to secure to Malays their interests in land; and Section 15 thereof provides that "No grant of Probate or of Letters of Administration shall operate to vest any Malay holding in any executor or administrator who is not a Malay." To my mind if such an administrator is obliged to sell Malay Reservation Lands vested in him in order to pay the deceased's estate, then the main object of the Enactment will be defeated; and a creditor has only to wait until his Malay debtor is dead and he will be able to obtain a sale of his Malay Reservation Lands though he is expressly prohibited from doing so by Section 13 of the Enactment. Such a situation would be truly absurd, and it is not to be lightly supposed that our legislature would countenance such an absurdity, especially as, by Section 12 of the Enactment, they have provided that "No Malay holding shall vest in the Official Assignee on the bankruptcy of the proprietor thereof."

For these reasons I have decided to uphold Mr. Mahendran's contention and to dismiss the Official Administrator's application for the sale of these four lots of land. Since, however, the question was a proper one to bring to a Judge for his decision, the costs of both parties will come out of the deceased's estate.

Application dismissed.